IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

WP(C).No. 1222 of 2005(U)
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PETITIONER:

THE EXECUTIVE ENGINEER,
TRIVANDRUM CENTRAL DIVISION, CENTRAL PUBLIC WORKS DEPARTMENT, VELAYANI P.O., TRIVANDRUM.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

RESPONDENTS:
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1. S.SADANANDAN,
KULATHINKARA VEEDU, PERUDAVU P.O., TRIVANDRUM.

2. INDUSTRIAL TRIBUNAL, KOLLAM.

BY ADV. SRI.P.RAMAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01 / 02 /2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.C NO. 1222/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE AWARD DT.7.5.04 OF INDUSTRIAL TRIBUNAL, KOLLAM IN I.D. NO.58/01.

EXT.P2:- COPY OF THE PETITION SUBMITTED BY 1ST RESPONDENT.

EXT.P3:- COPY OF THE WRITTEN STATEMENT FILED BY PETITIONER IN ID 58/01.

EXT.P4:- COPY OF THE RELEVANT PAGE OF CPWD MANUAL VOL.III CONCERNING WORK CHARGED ESTABLISHMENT.

EXT.P5:- COPY OF THE RELEVANT PAGE OF CPWD MANUAL VOL.III CONCERNING RECRUITMENT RULES FOR BELDAR.

EXT.P6:- COPY OF THE RELEVANT PAGE OF CPWD MANUAL VOL.III CONCERNING RECRUITMENT RULES FOR ASST.MASON.

EXT.P7:- COPY OF THE PROOF AFFIDAVIT FILED BY 1ST RESPONDENT DT.18.11.03.

EXT.P8:- COPY OF THE VERIFICATION REPORT SUBMITTED BY THE SUPERINTENDENT OF POLICE , TRIVANDRUM.

/TRUE COPY/

tss

C.R.

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 1222 of 2005 U

Dated, this the 1st day of February, 2007

J U D G M E N T

Heard the learned counsel for the petitioner and the learned counsel appearing for the 1st respondent.

2. Petitioner is challenging Ext.P1 award passed by the Industrial Tribunal, Kollam directing the petitioner to absorb the 1st respondent as a regular employee under the Central PWD. First respondent's claim is based on his casual employment through Employment Exchange. The periods of casual employment of the 1st respondent, based on which his claim for regularization was allowed by the Industrial Tribunal are stated below : -

"1. From 30/05/1985 to 03/12/1985 - (188 days)
2. From 08/07/1986 to 26/07/1986 - (19 days)
3. From 17/01/1987 to 25/05/1987 - (129 days)

Total - 336 days"

Even though the 1st respondent was relieved from casual employment on 26/05/1987, he instituted the proceedings before the Industrial Tribunal only after 14 years i.e. in the year 2001. The award is seen passed on 07/05/2004 i.e. 17 years after termination of the 1st respondent as a casual employee.

3. The learned counsel for the petitioner contended that the Tribunal should have called for and looked into the relevant provisions of recruitment, even though the Management failed to appear and produce it during proceedings before the Tribunal. The petitioner has produced Exts.P4 and P5 before this Court to show that a casual employee is entitled to be regularized in service, only if he was employed as muster roll worker, at least for 240 days in two consecutive years (in each of the consecutive years prior to regularization). This is contained in Rule XX (02) (ii) of Ext.P4 Recruitment Rules, which is extracted here under :

> "They should possess experience of a minimum of 2 years continuous service as Muster Roll workers in the C.P.W.D. Those who have put in at least 240 days on Muster Roll (including the broken periods) in each of the two consecutive years shall be eligible to be appointed."

Similarly, under the same Rules the age limit for appointment to the post claimed by 1st respondent is between 18 and 30. However, 1st respondent joined as a casual worker itself, when he was 35 years of age, and from the period of service furnished above, it is clear that 1st respondent did not have 240 days of service in any of the two consecutive years he was employed. The Tribunal in fact has not considered the relevant Rule and assumed that total 240 days service as casual worker is sufficient for regularization. Therefore, the order of the Tribunal has to be necessarily vacated and I do so. Even though

the learned counsel for the 1st respondent submitted that the Tribunal did not have an opportunity to see the Rules, and prayed for remand, I feel such remand will only cause further injustice to the 1st respondent himself, because on admitted facts he is ineligible for the relief. In these circumstances, this writ petition is allowed vacating the award of the Tribunal. However, I declare 1st respondent is entitled to retain the payment received by him under interim orders of this court under Sec. 17B of the ID Act.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg